

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

GREG NORBERG,)
)
Appellant,) PCHB NO. 92-213
)
v.) FINAL FINDINGS OF FACT
) CONCLUSIONS OF LAW
SOUTHWEST AIR POLLUTION) AND ORDER
CONTROL AUTHORITY,)
)
Respondent.)
_____)

This matter was heard on January 25, 1993, in Lacey, Washington, before the Pollution Control Hearings Board ("Board"). Robert V. Jensen, attorney member, presided. Harold S. Zimmerman, chairman and Annette S. McGee, member completed the administrative tribunal.

Appellant, Greg Norberg, appeared pro se. The Southwest Air Pollution Control Authority ("SWAPCA"), was represented by Robert D. Elliott, its Executive Director. Court reporter, Betty Koharski, affiliated with Gene S. Barker and Associates of Olympia, recorded the proceedings.

The Board heard the testimony of sworn witnesses, reviewed the exhibits and listened to closing arguments of the parties. Based thereon, the Board makes these:

FINAL FINDINGS OF FACT.
CONCLUSIONS OF LAW AND ORDER
PCHB NO. 92-213

1 FINDINGS OF FACT

2 I

3 On or about November 5, 1992, Greg Norberg received a written
4 Notice of Violation and Civil Penalty, in the amount of \$50.00, from
5 SWAPCA.

6 II

7 On April 23, 1992, William H. Hargett, Deputy Fire Marshal for
8 Clark County responded to a fire involving a 1972 MGB convertible and
9 fiberglass car molds, at 12921 S.E. Rivercrest Drive.

10 III

11 An examination of the fire scene revealed two burn piles
12 containing wood, cans, and bedsprings. One burn pile was just a few
13 feet from a pile of bark dust under several large trees.

14 IV

15 Two young men were present at the site, named: Mark Skundrick
16 and Jer Meeker. They admitted burning trash the day before, just a
17 few feet away from the April 23rd fire. Mr. Meeker admitted that the
18 fire had penetrated the bark dust, but he thought that the fire had
19 been put out. The fire that started April 23, 1992, resulted from the
20 improper extinguishment of the earlier fire.

21 V

22 The residence was occupied by Greg Norberg, son of the owner.
23 Mr. Norberg had subleased one half of the house to Shawn Angus for
24 approximately one year. Mark Skundrick and Jer Meeker, whom Mr.

25 FINAL FINDINGS OF FACT.
26 CONCLUSIONS OF LAW AND ORDER
27 PCHB NO. 92-213

1 Norberg met in a bar playing darts, had stayed at the house for about
2 a week, but had not paid any rent. They were acquainted with Shawn
3 Angus.

4 VI

5 There are no written rental contracts between Mr. Norberg and
6 any of the other tenants, nor are there any between Mr. Norberg or any
7 other tenants and his mother. Mr. Norberg collects money from other
8 tenants and pays it to his mother. Mr. Norberg selects the tenants.

9 VI

10 The testimony by Greg Norberg, concerning control over the
11 property was confused and sometimes conflicting. The Board does not
12 find this testimony to be particularly reliable or credible.

13 VII

14 Although Mr. Norberg was not at home when the fire occurred, he
15 had seen Mr. Skundrick and Mr. Meeker burning, but did not attempt to
16 stop them. He in fact told them, in regard to their efforts to clean
17 up the place, that things were looking better.

18 VIII

19 The property had been insured in Mrs. Norberg's name, but the
20 policy has been cancelled, as a consequence of the rental of the
21 property.

22 IX

23 Any Conclusion of Law deemed to be a Finding of Fact is hereby
24 adopted as such. From these Findings of Fact, the Board issues these:

25 FINAL FINDINGS OF FACT.
26 CONCLUSIONS OF LAW AND ORDER
27 PCHB NO. 92-213

1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over this issue and the parties,
4 under RCW 43.21B.310(1) and chapter 70.94 RCW.

5 II

6 SWAPCA has the initial burden of proof in this appeal of a
7 civil penalty.

8 III

9 The Board takes official notice of SWAPCA's General Regulations
10 for Air Pollution Sources, which are on file with the Environmental
11 Hearings Office.

12 IV

13 Section 400-035, provides that:

14 No person shall ignite, cause to be
15 ignited, or suffer, allow, or maintain
16 any open fire within the jurisdiction of
the Authority, except as provided in this
Regulation.

17 Section 400-035(2), allows open burning as follows:

18 Open burning may be done under permit:

19 (a) Burning permits may be provided by the local fire
20 department, fire district or Washington State
Department of Natural Resources.

21 (b) No permit shall be issued unless the Control Officer
22 is satisfied that:

23 (i) No practical alternate method is available for
the disposal of the material to be burned. (The
Authority has a written Open Outdoor Fire Policy

describing times, areas and kinds or [sic] permitted open fires).

- (ii) No salvage operation by open burning will be conducted.
- (iii) No garbage will be burned.
- (iv) No animals will be disposed of by burning.
- (v) No material containing asphalt, petroleum products, paints, rubber products, plastic or any substance which normally emits dense smoke or obnoxious odors will be burned.

. . .

- (4) It shall be (prima facie) evidence that the person who owns or controls property on which an open fire, prohibited by this regulations [sic], occurs has caused or allowed said open fire (emphasis added).

V

Mr. Norberg does not contend that the violation did not occur. He simply argues that he was not responsible for the fire that originated on April 22 and which was not properly extinguished.

VI

The original fire was an illegal burn under Section 400-035 of the SWAPCA General Regulations. Those regulations essentially restrict open burning that may be permitted to vegetation. The fire started on April 22, 1992 included such things as cans, wood and bedsprings.

VII

The issue is whether Mr. Norberg controlled the property, under Section 400-035(4), at the time of the violation. We conclude that he did.

FINAL FINDINGS OF FACT.
CONCLUSIONS OF LAW AND ORDER
FCHB NO. 92-213

1 VI

2 Mr. Norberg controlled the property in question at the time of
3 the fire, in that he selected the tenants. He also collected rent
4 from the tenants, and was responsible for forwarding this money to his
5 mother. Even though he did not collect any rent from Mark Skundrick
6 and Jer Meeker, they were staying at the house with his permission.
7 He approved of their cleanup operations, and did nothing to stop them,
8 once he knew they were burning debris on the property.

9 VII

10 The Clean Air Act is a strict liability statute. Normally, one
11 in control of property is held responsible for unlawful fires started
12 on the property. Here Mr. Norberg, created a substantial risk that an
13 unauthorized fire would occur by not taking any action, after
14 observing the illegal burn on the property, to ensure that it was
15 properly extinguished.

16 VIII

17 Any Finding of Fact deemed to be a Conclusion of Law is hereby
18 adopted as such. From the foregoing, the Board issues this:


19 ORDER

20 The civil penalty of \$50.00 issued by SWAPCA against Greg
21 Norberg is affirmed.

22
23
24
25 FINAL FINDINGS OF FACT.
26 CONCLUSIONS OF LAW AND ORDER
27 PCHB NO. 92-213

1 DONE this 2nd day of February, 1993.

3 POLLUTION CONTROL HEARINGS BOARD

4 
5 ROBERT V. JENSEN, Attorney Member,
6 presiding

7 
8 HAROLD S. ZIMMERMAN, Chairman

9 
10 ANNETTE S. MCGEE, Member

11
12 0032Z

13
14
15
16
17
18
19
20
21
22
23
24
25 FINAL FINDINGS OF FACT.
26 CONCLUSIONS OF LAW AND ORDER
27 PCHB NO. 92-213